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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,174	08/26/2003	S. Curtis Nye	15499.177.1	4442

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EXAMINER

CHAMBERS, MICHAEL S

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/648,174

**Applicant(s)**

NYE, S. CURTIS

**Examiner**

Mike Chambers

**Art Unit**

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 24-49 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 2 and 24-37 is/are allowed.  
6) ☒ Claim(s) 1,3-5,7-11,13-16,38-43 and 49 is/are rejected.  
7) ☒ Claim(s) 6,12, and 44-48 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/10/05.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3-5,7-11, 13-16, 38-43 and 49 are rejected under 35 U.S.C. 102(a) as being anticipated by Davis et al. Davis et al discloses a basketball goal; a support structure being sized and configured to support the basketball goal above a playing surface; a base being sized and configured to support the support structure, and an adjustment assembly that is capable of being moved between a first position in which the portable basketball system is held in a generally fixed position relative to the playing surface and a second position in which the portable basketball system is readily movable relative to the playing surface, the adjustment assembly comprising:

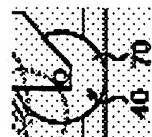
a bracket (84) at least partially disposed within a recess in the base; an arm (80) disposed proximate to the bracket ; a link ( un-numbered link see fig A) pivotally connecting the arm to the bracket to provide a first connection between the arm and the bracket; and a wheel assembly connected to the bracket and the arm, the wheel assembly providing a second connection ( un-numbered link see fig B) between the arm and the bracket that is distinct from the first connection between the arm and the

bracket; wherein at least a portion of the base contacts the playing surface when the adjustment assembly is in the first position

Fig A



Fig B



As to claim 3 : Davis et al discloses a wheel assembly (fig 1).

As to claim 4 : Davis et al discloses a U-shaped bracket (fig 1).

As to claim 5 : Davis et al discloses an axle with one or more wheels attached (fig 1).

As to claim 7 : Davis et al discloses an wheel attached to the base (fig 5, item 130).

As to claim 8 : Davis et al discloses a base where movement does not require substantial tilting of the base (fig 5).

As to claim 9 : Davis et al discloses a base that remains substantially parallel to the playing surface (fig 5).

As to claim 10 : Davis et al discloses a handle (fig 5).

As to claim 13 : Davis et al discloses a ballast base (fig 2).

As to claim 11 : Davis et al (fig 6) discloses a bracket (162) at least partially disposed within a recess in the base; an arm (181,182) disposed proximate to the bracket ; a link ( 163,170) pivotally connecting the arm to the bracket to provide a first connection between the arm and the bracket; and a wheel assembly (171,172) connected to the bracket and the arm (via link 163), wherein at least a portion of the base contacts the playing surface when the adjustment assembly is in the first position

wherein the bracket (162) is pivotally connected to the base (via element 161) to allow the wheel assembly to turn relative to the base.

As to claim 14 : Davis et al (fig 6) discloses a bracket (162), a pair of arms disposed on each side of the bracket (181,182); and a pair of links (1<sup>st</sup> set of pins/bolts to hold handles) connecting the arms to the bracket to provide a first connection between the pair of arms and the bracket, each link being sized and configured so that movement of the adjustment assembly from the first position to the second position corresponds to a change in position of the base member wherein the wheel assembly is connected to the pair of arms and the bracket to provide a second connection (2nd set of pins/bolts to hold handles) between the pair of arms and the bracket that is distinct from the first connection between the pair of arms and the bracket.

As to claim 15 : Davis et al discloses a rotatable member (fig 6, 8, 161,162).

As to claim 16 : Davis et al discloses a handle (fig 6, 185).

As to claim 38: Davis et al (fig 6) a bracket (162) that is at least generally disposed proximate an exterior surface of the base ; at least one brace (161) disposed proximate to the bracket; at least one link (brackets 161,162 pinned/bolted on 1 side) connecting the brace and the bracket to provide a first connection between the brace and the bracket; and a wheel assembly including at least one wheel, the wheel assembly being connected to the brace and the bracket to provide a second connection (brackets 161,162 pinned/bolted on 2nd side) between the brace and the bracket that is distinct from the first connection between the brace and the bracket, the wheel assembly facilitating movement of the portable basketball system relative to the playing surface when the adjustment mechanism is in the second position.

As to claim 39 : Davis et al discloses a wheel assembly (fig 6).

As to claim 40 : Davis et al discloses a bracket that will pivot (fig 6).

As to claim 41 : Davis et al discloses a first and second brace (fig 6, items 181,182).

As to claims 42 and 43: Davis et al discloses a handle (fig 6, 185).

As to claim 49 : Davis et al discloses a bracket that will pivot (fig 6).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,656,065. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the application are simply broader than the patent claims and clearly "read" on the claims in the patent.

Claims 1 and 38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,432,003. Although the conflicting claims are not identical, they are not patentably

distinct from each other because the claims in the application are simply broader than the patent claims and clearly "read" on the claims in the patent.

### ***Response to Arguments***

Applicant's arguments filed 5/31/05 have been fully considered but they are not persuasive. As noted above, the Davis reference still reads on the instant invention.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 571-272-4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Chambers  
Examiner  
Art Unit 3711

July 16, 2005

  
GREGORY VIDOVICH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700